



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2009

Mr. Daniel W. Ray
Scott, Money & Ray PLLC
Attorney for CASA for Hunt County
P.O. Box 1353
Greenville, Texas 75403-1353

OR2009-15673

Dear Mr. Ray:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 360359.

CASA for Hunt County, Inc. ("CASA"), which you represent, received a request for information pertaining to a specified case. You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information contains court-filed documents. These documents are subject to section 552.022(a)(17) of the Government Code, which provides that "information that is also contained in a public court record" is "public information and not excepted from required disclosure under this chapter unless [it is] expressly confidential under other law[.]" Gov't Code § 552.022(a)(17). Although you seek to withhold this information under section 552.103 of the Government Code, that section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 is not other law that makes information expressly confidential for the purposes of section 552.022(a)(17). Therefore, the court filed documents that are subject to section 552.022(a)(17) may not be withheld under section 552.103. We note, however, the submitted information is subject to section 552.101,

which does constitute "other law" for the purposes of section 552.022.¹ Accordingly, we will address the applicability of this section to the submitted information, including the documents subject to section 552.022(a)(17) of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes, such as chapter 264 of the Family Code. Section 264.613 of the Family Code provides the following:

(a) The files, reports, records, communications, and working papers used or developed in providing services under this subchapter are confidential and not subject to disclosure under Chapter 552, Government Code, and may only be disclosed for purposes consistent with this subchapter.

(b) Information described by Subsection (a) may be disclosed to:

(1) the department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals, and other state agencies that provide services to children and families;

(2) the attorney for the child who is the subject of the information;
and

(3) eligible children's advocacy centers.

(c) Information related to the investigation of a report of abuse or neglect of a child under Chapter 261 and services provided as a result of the investigation are confidential as provided by Section 261.201.

Fam. Code § 264.613 (footnote omitted). We understand that CASA is a "volunteer advocate program" for purposes of subchapter G of chapter 264 of the Family Code. *See id.* § 264.601(2) (defining volunteer advocate program). You inform us that the requested information pertains to pending litigation, which you have identified, and we understand that CASA represents the neglected children who are the subjects of the litigation. After review of your arguments and the information at issue, we find that the submitted information consists of files, reports, records, communications, or working papers used or developed in providing services under subchapter G of chapter 264 of the Family Code. The requestor does not appear to have a right of access to this information. *See id.* § 264.613(b); *In re*

¹The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Fulgium, 150 S.W.3d 252, 256 (Tex. App.—Texarkana 2004, orig. proceeding) (list of parties to which disclosure may be made under subsection 264.613(b) does not include parents or grandparents). We therefore conclude CASA must generally withhold the submitted information under section 552.101 of the Government Code in conjunction with section 264.613 of the Family Code. *See* Fam. Code § 264.613(a).

In this instance, however, the submitted information includes the requestor's and her child's medical records, access to which is governed by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(b), (c). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). The medical records of the adult requestor must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, 159.005. Some of the medical records at issue involve the requestor's child. Medical records involving a minor may only be released on the parent's or legal guardian's written consent, provided that the consent meets the above requirements. *See id.* §§ 159.004, 159.005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). We have marked the portion of the submitted information that constitutes medical records and that may only be released in accordance with the MPA. Open Records Decision No. 598 (1991).

The submitted information also includes mental health records of the requestor and her child that are governed by provisions of chapter 611 of the Health and Safety Code. Section 611.002 provides in part:

(a) Communications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.

(b) Confidential communications or records may not be disclosed except as provided by Section 611.004 or 611.0045.

Health & Safety Code § 611.002(a)-(b); *see also id.* § 611.001 (defining “patient” and “professional”). Sections 611.004 and 611.0045 of the Health and Safety Code provide for access to information that section 611.002 makes confidential only by certain individuals. *See id.* §§ 611.004, 611.0045; ORD 565. We have marked mental health records that are confidential under section 611.002 of the Health and Safety Code but must be released if the requestor is authorized to obtain those records under sections 611.004 and 611.0045 of the Health and Safety Code. *See* Health & Safety Code § 611.004(a)(4) (professional may disclose confidential information to person who has patient’s written consent or to parent of minor patient).

Thus, although the submitted information is generally confidential under section 264.613 of the Family Code, sections 159.004 and 159.005 of the MPA and sections 611.004 and 611.0045 of the Health and Safety Code may provide the requestor with a right of access to the marked medical and mental health records. Therefore, there is a conflict between section 264.613 of the Family Code and the applicable provisions of the MPA and chapter 611 of the Health and Safety Code. Where general and specific statutes are in irreconcilable conflict, the specific provision typically prevails as an exception to the general provision unless the general provision was enacted later and there is clear evidence that the legislature intended the general provision to prevail. *See* Gov’t Code § 311.026(b); *City of Lake Dallas v. Lake Cities Mun. Util. Auth.*, 555 S.W.2d 163, 168 (Tex. Civ. App.—Fort Worth 1977, writ ref’d n.r.e.). Although section 264.613 generally makes information used or developed in providing services under subchapter G of chapter 264 of the Family Code confidential, the applicable provisions of the MPA and chapter 611 of the Health and Safety Code specifically permit the release of medical and mental health records to certain parties and under certain circumstances. Therefore, notwithstanding the provisions of section 264.613 of the Family Code, we conclude that CASA must release the marked medical and mental health records to the requestor if it receives the required authorization for the release of those records under sections 159.004 and 159.005 of the MPA and sections 611.004 and 611.0045 of the Health and Safety Code.² In that event, the remaining information must be withheld under section 552.101 of the Government Code in conjunction with section 264.613 of the Family Code. If CASA does not receive the required authorization for release of the medical and mental health records, then CASA must withhold all of the submitted information under section 552.101 in conjunction with section 264.613.³

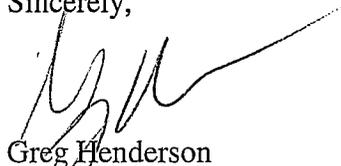
²Although you claim section 552.103 for this information, the MPA and chapter 611 of the Health and Safety Code prevail over the general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 at 4 (1986).

³As our ruling is dispositive, we need not address your remaining argument against disclosure.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID# 360359

Enc. Submitted documents

c: Requestor
(w/o enclosures)